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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,328	04/26/2002	Klaus David Gradischnig	112740-391	6260

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BELL, BOYD & LLOYD, LLC  
P. O. BOX 1135  
CHICAGO, IL 60690-1135

EXAMINER
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SCUDERI, PHILIP S

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/019,328

**Applicant(s)**

GRADISCHNIG ET AL.

**Examiner**

Philip S. Scuderi

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-10 is/are pending in the application.
- 4a) Of the above claim(s) 4-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

This Office Action is in response to Applicant's amendment, filed June 3, 2005. Claims 1-3 are cancelled. Claims 4-6 are amended. Claims 7-10 are new claims.

#### *Response to Amendment*

In the First Office Action Examiner treated claims 1-3 on the merits. However, as noted by Applicant, a Preliminary Amendment was filed on December 21, 2001, canceling claims 1-3.

The Preliminary Amendment cancelled claims 1-3 and introduced new claims 4-6. Examiner apparently overlooked the Preliminary Amendment. Accordingly, the rejections of claims 1-3 are obsolete and this Office Action is non-final.

#### *Response to Arguments*

Claim 4 recites the following limitations:

- “a protocol device in a protocol system for ...” (line 1);
- “a part for ...” (line 3); and
- “a part for ...” (line 7).

In each of the above instances, the limitation(s) succeeding the word “for” are merely intended use. If a prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Applicant contends that Tannenbaum does not teach either “part” recited in claim 4. Examiner respectfully disagrees. The parts that Applicant contends Tannenbaum does not teach

need only to be capable of performing the limitations succeeding the word “for” (as discussed above). There is no reason to believe that cited the data link layer would not be capable of performing the steps succeeding the term “for” in either step of claim 4.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 6, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Design principles and performance analysis of SSCOP: a new ATM Adaptation Layer protocol (TR Henderson, ACM SIGCOMM Computer Communication Review, 1995, hereinafter “Henderson”).

In considering claim 4, Henderson teaches a protocol device (fig. 2 - Transmitter) in a protocol system for transmitting messages (fig. 2), comprising:

- a part (fig. 1 – SSCOP layer) for determining, based on protocol information which is contained in a control message received by the protocol device, whether the control message contains information that is newer than a current information state in the protocol device (These limitations are merely intended use. There is no reason to believe that the SSCOP layer is incapable of performing the functions.); and

- a part (fig. 1 – SSCOP layer) for updating, if necessary, the information state based on the determination (These limitations are merely intended use. There is no reason to believe that the SSCOP layer is incapable of performing the functions.).

In considering claims 6, 9, and 10, the claims merely further limit intended use limitations, which need not be disclosed by the reference in order to read on the claims. The claims are rejected because there is no reason to believe that the SSCOP layer (fig. 1) of the Transmitter (fig. 2) would be incapable of performing the limitations of claims 6, 9, and 10.

Claims 4, 5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by *Computer Networks* (A.S. Tannenbaum, Prentice Hall 1996, hereinafter “Tannenbaum”).

In considering claim 4, Tannenbaum teaches a protocol device in a protocol system for transmitting messages (p. 230 lines 33-34, the implied device that is associated with the sender), comprising:

- a part (p. 203 line 41, the data link layer) for determining, based on protocol information which is contained in a control message received by the protocol device, whether the control message contains information that is newer than a current information state in the protocol device (This function is merely intended use. There is no reason to believe that the data link layer is incapable of performing the function.); and

- a part (p. 203 line 41, the data link layer) for updating, if necessary, the information state based on the determination (This function is merely intended use. There is no reason to believe that the data link layer is incapable of performing the function.).

In considering claim 5, Tannenbaum teaches the protocol device applied to claim 4, wherein the protocol device successfully numbers received control messages for which it cannot reconstruct a sequence of the received control messages on the protocol information (p. 203 “In all sliding window protocols, each outbound frame contains a sequence number”, So there are no monitoring messages for which said protocol device cannot reconstruct the sequence of the received monitoring messages on the basis of said protocol information because each outbound frame contains a sequence number.).

In considering claim 7, Tannenbaum teaches the protocol device applied to claim 4, wherein the part for determining part (i.e. the data link layer) stores at least part of the control message (p. 203 lines 28-29, the sequence number) in place of the current information that is newer than a current information state in the protocol device (p. 204 lines 8-9, the lower edge of the sliding window).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

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skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson in view of Admissions by Applicant (see MPEP § 2129).

In considering claim 8, Henderson teaches the protocol device applied to claim 4. Henderson does not expressly disclose that the protocol device operates under the MSSCOP transmission protocol. However, Applicant teaches that SSCOP was being upgraded into MSSCOP (specification p. 4 lines 18-23). Given Applicant's admissions, it would have been obvious to one of ordinary skill in the art to upgrade the protocol device to operated under the MSSCOP transmission protocol, thereby giving the device multilink compatibility (specification p. 8 lines 18-19).

### *Conclusion*


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip S. Scuderi whose telephone number is (571) 272-5865. The examiner can normally be reached on Monday-Friday 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GLENTON B. BURGESS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100